IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.07.2007

CORM:

THE HON'BLE MR. JUSTICE P. JYOTHIMANI

Writ Petition No.13196 of 2001

S. Singaravelu .. Petitioner

Vs.

1. General Manager
   Southern Railway
   Madras.

2. Presiding Officer
   Central Government Industrial
   Tribunal- cum - Labour Court
   Sasthiri Bhavan
   Nungambakkam, Chennai. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus as stated therein.

Mr. Balan Haridas
For petitioner : Mr. R. Kamatchi Sundaresan

For respondents : Ms. Aparna Nandakumar for R.1

ORDER

This writ petition is filed challenging the order of the second respondent Central Government Industrial Tribunal –cum–Labour Court, Chennai dated 06.06.2001 passed in I.D.No.485 of 2001.

2. The short facts relating to this case are as follows:

The petitioner joined in the services of the first respondent Railway as a Clerk on 14.03.1977. A charge memo was issued against the petitioner on 23.07.1986, stating that the petitioner while functioning as Enquiry-cum-Reservation Clerk in the Reservation Office, Madras Central, Southern Railway, Madras, committed misconduct and failed to maintain absolute integrity and devotion to duty inasmuch as he has misappropriated an amount of Rs.10,070/- on or about 15.12.1984 by 6.15 pm by making false

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entries in the Railway records as if he has refunded the said amount on demand for cancellation by a bona fide passenger in BPT.No.085444 purported to have been issued on 22.09.1984 for 95 adults for journey on 30.12.1984 in Train No.145 Navjeevan Express from Ahmedabad to Madras. The said charges were framed as the conduct of the petitioner was in violation of Rule 3(1)(i), 3 (1)(ii) and 3(1) (iii) of the Railway Service (Conduct) Rules, 1966. The petitioner has given a detailed explanation on 27.06.1987, denying the charges. According to him, on 15.12.1984, when he was working in the Enquiry-cum-Refund Counter, he has made refund of the amount based on the cancellation made by the Cancellation Clerk along with refund application. The said refund was made to the person, who presented it across the counter, since the ticket was cancelled and the endorsement was made by the Cancellation Clerk.

2 (a). The first respondent has conducted enquiry, in which 10 witnesses were examined. However the case of the petitioner is that he was not allowed to be represented by a Government servant of his choice, even though the Railway was represented by a CBI Inspector, who, according to the petitioner, is a legally trained person. According to him, the Cancellation Clerk J. Gnaneshwara Rao, examined as P.W.1 has made an endorsement in the cancellation form and the cancellation form was not produced before the enquiry and if it was produced before the enquiry, the petitioner would have proved that he made payment only on the basis of the endorsement made by the Cancellation Clerk.

2 (b). According to the petitioner, in spite of the fact that there is no eye witness and even though in the charge it is stated that the ticket was sent to an handwriting expert and name also given, no such Handwriting Expert was examined and no such report from the Handwriting Expert was furnished to him. The Enquiry Officer, after conducting enquiry, has sent a report stating that the charges framed against the petitioner stand established and has also suggested deterrent punishment. It was, based on the Enquiry Officer's report, the Disciplinary Authority has imposed the punishment of removal from service on 08.06.1988 and the same was confirmed by the Appellate Authority on 03.07.1989. When the petitioner filed Original Application in O.A.No.156 of 1990 before the Central Administrative Tribunal, the same was allowed on the ground that the Enquiry Officer's report was not furnished to him and therefore by setting aside the punishment, the matter was remanded back by permitting the first respondent Railway to continue the disciplinary proceedings after giving a copy of the enquiry report to the petitioner. It was pursuant to the said remand, the petitioner has given further explanation on 21.11.1991, and according to the petitioner, the Disciplinary Authority, without application of mind, has passed order on 07.12.1992, removing him from service.

2 (c). The petitioner has preferred an appeal before the appellate authority on 21.12.1992 and the appellate authority, without re-appreciating the material on record, by order dated 09.09.1993, has modified the punishment of removal from service to one of compulsory retirement. It was challenging the said punishment of the appellate authority, the petitioner has raised an industrial dispute in I.D.No.37 of 1998 before the Industrial Tribunal, Chennai, which was subsequently

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transferred to the second respondent Tribunal and re-numbered as I.D.No.485 of 2001.

2 (d). According to the petitioner, it was not the case of the first respondent Management that in the event of domestic enquiry being held as not fair and proper, the Management would like to lead evidence to prove the charges. The petitioner has raised the point that the domestic enquiry was not properly conducted for the reason that when the Railway was represented by an outsider, being C.B.I. Inspector, who is a legally trained person, the request of the petitioner to have an outsider for his assistance, viz., a retired Government servant of his choice was denied by quoting Rule 9 (13) (1) (a) and (b) of Chapter Part IV Procedure for Imposing Major Penalties under the Railway Servants (Discipline & Appeal) Rules, 1968. According to the petitioner, the denial of permission to him to be assisted by an outsider, viz., a retired Government servant, especially in the circumstances that the Management is represented through a C.B.I. Inspector, who is a legally trained person, will make the domestic enquiry as a farce. It is also the further case of the petitioner that in the charge there are two names mentioned, one is P.S.S.P. Babu, Investigating Officer and another is D.R. Rohilla, who is an Handwriting Expert. However, the reports of the Babu, who is an Investigating Officer on the criminal side as well as the Handwriting Expert, have not been furnished to him and therefore, the enquiry is vitiated by violation of principles of natural justice. According to the petitioner, the Tribunal has passed an award holding that the domestic enquiry was fair and proper and the charge framed against the petitioner was proved and as against the award of the Labour Court, the writ petition is filed.

3. The first respondent has filed a counter affidavit. It is the case of the first respondent that the factual situation which has been analysed by the Enquiry Officer cannot be re-canvassed by the petitioner in the writ petition. In the counter it is also stated that in respect of the unlawful refund of an amount of Rs.10,070/- the petitioner has committed various discrepancies, which are as follows:

> "1.Issue of single ticket for 95 passengers which is unusual.
> 2.Ticket was issued from Madras to Ahmedabad for which Message charges of Rs.3/- were collected.
> 3.Message No. does not tally with the Message Book.
> 4.Train No.145 was from Ahmedabad to Madras but the ticket issued was from Madras to Ahmedabad.
> 5.Train No.145 of 30.12.84 is shown in the Ticket. 30.12.84 was a Sunday, it is Navjeevan express and it was not running on Sundays.
> 6.The application for cancellation was not there.
> 7.The ticket did not contain the names of 95 persons.
> 8.The respondent conclusively submits that the petitioner Shri. Singaravelu did not follow the procedure for refund. "

This was also pointed out in the statement of imputation sent with the charge memo. It is the case of the first respondent that simply because the amount of loss has been recovered from the salary of the petitioner,

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it does not mean that the conduct of the petitioner causing embezzlement and committing breach of orders will be scrapped. In this regard, the first respondent also refers to the order passed by the Central Administrative Tribunal in O.A.No.156 of 1990 stating that recovery of the amount from the petitioner's salary will not have the effect of preventing imposition of penalty for the loss within the meaning of Clause 6(v) of the Rules. It is also the case of the first respondent that the report of the Handwriting Expert was not at all relied upon either by the Enquiry Officer or by the Disciplinary Authority for proving the misconduct against the petitioner.

3 (a). It is the further case of the first respondent that even though the Management has let in 10 witnesses, the petitioner has not chosen to examine any witness nor produced any documents to prove his innocence. It is also the case of the first respondent that pursuant to the order of the Central Administrative Tribunal in O.A.No.156 of 1990, a copy of the enquiry report was furnished to the petitioner and the Disciplinary Authority has considered the case on merits and the Appellate Authority has also considered the same and awarded punishment of compulsory retirement by reducing the punishment of removal. As far as the representation of the delinquent through another person, the case of the first respondent is that it is subject to the Service Rules. A lawyer can be permitted to be represented in the domestic enquiry only if the Rules specifically provides and there is no provision under the relevant Rules to provide an assistant from the lawyer to the delinquent. It is also stated that as per the Service Rules there is no provision for an outsider to represent the delinquent. According to the first respondent, non- production of the report of V.S.S.P. Babu, the Investigating Officer as well as the Handwriting Expert has not vitiated the enquiry proceedings, since they were not relied upon in the domestic enquiry proceedings to substantiate the charges. The first respondent would also further submit that the conduct of the petitioner is so serious that it is not only misappropriation of amount of Rs.10,070/-, but it is also by making false entries in the Railway records as if he has refunded the amount based on a bogus ticket stated to have been issued on 29.10.1984 for 95 adults especially on a day when the Navjeevan Express was not at all running. Therefore, according to the first respondent, the charges framed against the petitioner is proved and the same are serious and therefore there is no defect in the enquiry proceedings and the writ petition deserved to be dismissed.

4. Mr. R. Kamatchi Sundaram, learned counsel appearing for the petitioner, would submit the following points in support of the petitioner:

(i) When the first respondent Management has engaged a C.B.I. Inspector to assist the Management in the domestic enquiry, the petitioner should have been given an opportunity to represent through a proper person of his choice, so as to have a right of effective defence. According to him, the C.B.I. Inspector is presumed to be a legally trained person and therefore to match with his representation, the employee, viz., the petitioner should have been given permission for assistance of a legal practitioner.

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He would submit that by not permitting the petitioner to have such assistance, a gross disadvantage is suffered by the petitioner and therefore, according to him, the disciplinary proceedings are vitiated. He has relied upon various judgments, viz.,

(a) Indian Airlines Corporation vs. N. Sundaram (1992 (II) L.L.N. 811);

(b) The Board of Trustees of the Port of Bombay vs. Dilipkumar Raghavendranath Nadkarni (1983 (1) L.L.J. 1);

(c) S. Gnanasambandam vs. Tamil Nadu Cements Corporation Ltd., (2001 (3) L.L.N. 677);

(d) Chairman and Managing Director, Hindustan Teleprinters Ltd., vs. M.Rajan Isaac (2005 (2) L.L.N. 853).

(ii) The charge memo contains the names of witnesses, including the Handwriting Expert, viz., D.R. Rohilla, Senior Scientific Officer and also P.S.S.P. Babu, Inspector of Police. It was the duty of the first respondent Management to furnish the copies of report submitted by them. While admitting that the said D.R. Rohilla, was not examined as witness, it is the case of the learned counsel that the Inspector of Police was examined as PW.10 and therefore, it is incumbent on the part of the Railway to furnish the copy of the report and according to him, non-furnishing of the Handwriting Expert's report is fatal to the proceedings. He would also submit that by referring to Handwriting Expert's report, if it is supplied, the petitioner/delinquent would have been in a better position to defend his case. Likewise, in respect of non-furnishing of the report of P.S.S.P. Babu, Inspector of Police, who investigated the criminal case, he submits that the same violates the principles of natural justice.

(iii) According to the learned counsel for the petitioner, the Disciplinary Authority has traversed beyond the charge. According to him, the charge memo does not say that there is manipulation of the number of passengers from 90 to 95. While the charge relates to improper refund of the amount under a cancelled ticket, the Disciplinary Authority has gone beyond the same to find that the petitioner has manipulated the number of travelers from 90 to 95. Therefore, according to him, the entire proceedings are vitiated and these factors have not been considered by the Labour Court.

5. Per contra, Mrs. Aparna Nandakumar, learned counsel appearing for the first respondent has submitted the following points:

(i) As far as the legal practitioner to represent the petitioner, she would submit that as per the records,

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it is seen that the petitioner himself has never asked for the assistance of a legal practitioner and he only asked for a Government servant of his choice and as per the relevant Rules, especially Rule 9 (13) (1) (a), the delinquent officer of the Railway can represent his case by assistance of any other Railway servant including a retired Railway servant. She would also submit that on the facts and circumstances of the case, there is no legal issue involved and therefore it is not correct to state that the C.B.I. Inspector who has represented the Management is a legally trained person;

(ii) As far as the report of Handwriting Expert is concerned, her submission is that the Management has not relied upon the report of the Handwriting Expert or the Investigating Officer. Therefore, there was no question to submit the said reports. In any event, it is her contention that the Handwriting Expert was not at all examined, but, on the other hand, the Investigating Officer was examined and the petitioner was given an opportunity to cross examine him and the domestic enquiry or the departmental proceedings are not based on the criminal investigation done by the said witness P.W.10;

(iii) Regarding the next argument that the Disciplinary Authority has traversed beyond the charge, the learned counsel for the first respondent would submit that the imputation of charge itself makes everything clear and therefore there was no question of Disciplinary Authority having traversed beyond the charge and therefore according to her, the petitioner has availed the opportunity to the maximum possible extent and he has participated in the domestic enquiry throughout and in view of the same there is no question of violation of principles of natural justice and therefore she submitted that the writ petition is liable to be dismissed.

6. I have heard the learned counsel for the petitioner as also the first respondent and perused the entire records.

7. A reference to the charge framed against the petitioner dated 23.07.1986 shows that the said charge was in violation of the Rules under the Railway Service (Conduct) Rules, 1966. The charge framed against the petitioner is as follows:

" That the said Sri. S. Singaravelu, while functioning as Enquiry-cum-Reservation Clerk, Reservation Office, Madras Central, Southern Railway, Madras committed misconduct and failed to maintain absolute integrity and devotion to duty and did acts of which were unbecoming of a Railway of Govt. servant inasmuch as he has granted and misappropriated an amount of Rs.10070/- in or about 15.12.84 by 18.15

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hours, belonging to Railway Office, by making false entries in Railway records as if he had refunded the said amount on demand for cancellation by a bona fide passenger on the passenger foil of B.P.T.No.085444 purported to have issued on 29.10.84 for 95 adults for journey on 30.12.84 in Train No.145-Navjeevan Express from Ahmedabad to Madras Central in violation of Office procedures and he thereby violated Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Railway Service (Conduct) Rules, 1966."

8. Along with the said Charge Memo, Statement of Imputation has been given to the petitioner, which contains details along with the discrepancies found in Passenger Foil No.085444, on which the refund was stated to have been made by the petitioner. The Statement of Imputation specifically states the following discrepancies.

"1. Issue of single ticket for 95 passengers which is unusual.
2.Ticket was issued from Madras to Ahmedabad for which Message charges of Rs.3/- were collected.
3.Message No.MC-22/29/7/RJ of 29.10.84 is not at all tallying with the Message Book.
4. Raghavan E.C.R.C who is said to have issued it never worked in Central Station.
5.Train No.145 was from Ahmedabad to Madras but the ticket issued was from Madras to Ahmedabad.
6. Train No.145 of 30.12.84 is shown in the Ticket. 30.12.84 was a Sunday, it is Navjeevan express and it was not running on Sundays.
7. The application for cancellation was not there.
8. The ticket did not contain the names of 95 persons."

9. It is also true that the list of documents and witnesses relied upon contains the name of one D.R. Rohilla, Senior Scientific Officer as Witness No.12 and one P.S.S.P. Babu, Inspector of Police as one of the witnesses. It is also not in dispute that the said Handwriting Expert was not examined as his report was also not relied upon either in the domestic enquiry or by the Disciplinary Authority. Likewise, it is also not in dispute that the said Babu, Inspector of Police was examined as a witness (PW.10) and reference to the proceedings shows that the report of the Inspector of Police has not been relied upon for the purpose of proving the charges. A reference to the imputation of charges show that there was no application for cancellation and another astonishing factor is that the ticket stated to have been produced before the petitioner for refund, which, according to the first respondent, was a bogus ticket and was relating to Train No.145 and that train was to run from Ahamedabad to Madras as Navjeevan Express. But, the ticket contains as if the Train No.145 is a Navjeevan Express to run from Madras to Ahamedabad. More astonishingly, the ticket shows that the train was to run on Sunday, viz., on 30.12.1984 and it is not in dispute that Navjeevan Express did not run on Sunday. Moreover, the said ticket stated to have been produced before the petitioner relates to 95 passengers and it did not contain the names

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of the 95 persons and therefore in such circumstances, the refund made by the petitioner is questioned. Prima facie there is no difficulty in coming to the conclusion that bereft of the other argument that the Cancellation Clerk has made endorsement and therefore, as a Refund Clerk, he has only refunded the amount, as a refunding officer, the petitioner cannot say that he has no duty to find out that such train was not in existence at all and such train was running from Madras to Ahamedabad while the ticket produced before him states otherwise. Therefore, the contention as if the petitioner has only followed what was endorsed by the refund officer cannot be countenanced. Further, it is relevant to point out that it is the case of the first respondent Management that there was no cancellation form at all and therefore the ticket produced across the counter to the petitioner was only a bogus ticket. The case of the petitioner is that on that date Sri. T. Gnaneswara Rao was working in the next counter as Cancellation Clerk and after he has made endorsement, the ticket was produced before the petitioner and on the basis of that endorsement he has made the refund. When a specific question was put by the petitioner in cross examination to the said T. Gnaneswara Rao, he has specifically stated that there was no cancellation remark in the ticket. The question and answer in this regard is as follows:

> "Q.19. Having worked in the issue and at refund counter, please see exhibit P.1 and say what are the defects you are able to note?
> A. T.No. is mentioned as 145 whereas the ticket is for Madras Central to Ahmedabad and no cancellation remark were made in the ticket."

Therefore, it is clear that Ex.P.1-ticket does not contain any cancellation remark, as it is elicited by the petitioner himself during cross examination of the said Cancellation Clerk Sri.T. Gnaneswara Rao. In such circumstances, it is also clear that the stand taken by the petitioner as if he has acted based on cancellation remark made by the Cancellation Clerk and therefore there was no intentional or willful act of misappropriation and utmost negligence, cannot also be accepted.

10. It is also not in dispute that throughout the domestic enquiry proceedings the petitioner has participated and in fact effectively cross examined various witnesses examined on the side of the first respondent Management. It is clear from the records that the petitioner has not chosen to produce any evidence to substantiate his defence. This is the factual position. In the light of the above circumstances, I proceed to consider the various arguments advanced by the respective counsel.

11. In respect of first contention raised by the learned counsel appearing for the petitioner that the petitioner was not permitted to effectively defend his case during domestic enquiry, it is his contention that when the first respondent Management has permitted the C.B.I. Inspector to assist the Management, he should be presumed to be a legally trained person and therefore, the petitioner also should have been permitted to be assisted by a legally trained person. First of all, the contention that the C.B.I. Inspector, who has been appointed to assist the first respondent Management, is a legally trained person, is not

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sustainable. Simply because the said C.B.I. Inspector is well versed in the investigation in respect of the offences, he cannot be claimed to be a legally qualified person for the purpose of disciplinary proceedings like in the present case. Admittedly, the said C.B.I. Inspector, who has assisted the first respondent Management is not a legal practitioner and therefore, in such circumstances,, the claim of the petitioner as if he should have been permitted to represent through a legal practitioner is not acceptable. Even on the factual position, in the present case, as rightly pointed out by the learned counsel appearing for the first respondent, the claim of the petitioner himself is that he wanted himself to be assisted by a Government servant of his choice. Even assuming that the C.B.I. Inspector has been appointed as a Presenting Officer for the first respondent, it was never the claim of the petitioner to have the assistance of a legal practitioner. The evidence of the petitioner before the Enquiry Officer in this regard is very clear. The question and answer are as follows:

> "Q.1. A copy of the charge memorandum together with the statement of imputations of misconduct or misbehaviour is read over and given to you by me now. Do you understand the charge/s thoroughly? Do you admit the charge/s? If not, are you ready to proceed with the enquiry? Have you perused all the documents connected with the case?
>
> A. I understand the charges but deny the same. The statements/opinion of the witnesses mentioned against items 12 to 16 in Annexure IV of the Charge Memorandum which are necessary for me for my defence, I have not been made available to me. I request that these may be made available and on receipt of these I am prepared to proceed with the enquiry. Again I request Enquiry Officer to refer to my letter dated 22.7.87 addressed to Sr.DCS/MAS wherein I requested that I may be permitted to take the assistance of any Government servant of my choice. Inasmuch as an Inspector of Police of the CBI has been appointed as the Presenting Officer in this case. "

It is thereafter, the Enquiry Officer has ordered that the C.B.I. Inspector is not a legal practitioner and is only a Government Servant and as per Rule 9 (13)(1) (a) and (b) and Note 1 and 2 of the Procedure for Imposing Major Penalties of Railway Servants (Discipline & Appeal) Rules, 1968, he is entitled for an assistance only by a serving railway servant or a retired railway servant and it is therefore seen that subsequently, the petitioner has engaged for his assistance, one Sri K. Chandrasekaran, retired CGS/SO.

12. Now referring to the relevant Rules. The Railway Servants (Discipline and Appeal) Rules, 1968 was a Rule framed as per the powers conferred under the proviso to Article 309 of the Constitution of India. In the said Service Rules, which are binding upon the petitioner, is Part IV - Procedure for Imposing Major Penalties. Rule 9(13)(1)(a) and (b)

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speaks about the assistance to be given by the Administration during the disciplinary proceedings and it runs as follows:

> "Rule 9 (13)(1)(a) The railway servant may represent his case with the assistance of any other railway servant (including a railway servant on leave preparatory to retirement) working under the same Railway Administration, subject to whose jurisdiction and control he is working. He cannot engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner or the disciplinary authority having regard to the circumstances of the case, so permits. If the railway servant is employed in the office of the railway Board, its attached office or sub-ordinate office, he may present his case with the assistance of any other railway servant (including a railway servant on lease preparatory to retirement), employed in the office of the Railway Board, attached office or sub-ordinate office, as the case may be, in which he is working.
>
> (b) the Railway servant may also present his case with the assistance of a retired Railway servant, subject to such conditions as may be specified by the President from time to time by general or special orders in this behalf."

13. There are two foot notes in the said Rules, which also run as follows:

> Note:
>
> (1) A non-gazetted railway servant may take the assistance of an official of a Railway Trade Union, recognised by the Railway Administration under which the railway servant is employed to present his case before an inquiring authority but shall not engage a legal practitioner for the above purpose except in the circumstances brought out in clause (a). An official of a Railway Trade Union shall not be allowed to appear on behalf of an alleged delinquent railway official in connection with a disciplinary case pending against that official, to present his case favourably before an inquiring authority unless he has worked as such in a recognised Railway Trade Union for a period of at least one year continuously prior to his appearance before an inquiring authority for the above purpose and subject to the condition that he take no fees.
>
> (2) Nomination of an assisting Railway servant or an official of a recognised Railway Trade Union shall be made within 20 days from the date of appointment of inquiring authority and it shall not be accepted if at the time of nomination the assisting Railway servant or the official of a recognised Railway trade union has

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more than three pending disciplinary cases in which he has to assist."

Therefore, a reading of the Rule shows that a Railway servant has a right to represent his case with the assistance of other railway servant, including a retired railway servant. That apart, the Rule is clear that the delinquent cannot engage a legal practitioner, unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner. Therefore, there is no difficulty in coming to the conclusion in this case that since the officer appointed by the first respondent to assist the Management, who is a C.B.I. Inspector cannot be termed as a legal practitioner and he was also not a legal practitioner. As such, there is no question of right on the part of the petitioner to claim a legal practitioner to assist him. Further, the Service Rules specifically enable the petitioner only to engage a person working in the Railway establishment including a retired person. Therefore, the contention raised on behalf of the learned counsel appearing for the petitioner that the petitioner has not been permitted to represent through legally trained person deserved to be rejected, since the petitioner is bound by the specific Rules.

14. In the case of Indian Airlines Corporation vs. N. Sundaram (1992 (II) L.L.N. 811), the Division Bench of this Court while dealing with Indian Airlines Employees Standing Orders (Regulations) Concerning Discipline and Appeals, had to deal with Standing Order 32, which reads as follows:

> "An employee may be permitted, if he so desires, to have, under his own arrangements, the assistance of a 'friend' during the course of the enquiry. Such a 'friend' must be an employee of the corporation. No outside representation shall be permitted in any circumstances. "

In that case, one Assistant Manager (Personnel), who was a legally qualified and well trained in disciplinary proceedings, was availed by the Management as a Presenting Officer. When the delinquent has requested for representation through a lawyer, that was rejected. It was in those circumstances observed that, "the Corporation did have the services of a legally qualified and trained person, who had considerable experience in the conduct of disciplinary proceedings." The Division Bench has further held that the delinquent therein was in a disadvantageous position while meeting such a Presenting Officer, who was well qualified, and held that the delinquent was entitled for relief. However, on the factual situation in this case, I do not think that the said judgment has any application since the Presenting Officer appointed in the present case is not a legal practitioner or legally qualified person and he was a C.B.I. Inspector.

15. The reference made by the learned counsel appearing for the petitioner to the judgment of the Supreme Court rendered in the Board of Trustees of the Port of Bombay vs. Dilipkumar Raghavendranath Nadkarni (1983 (1) L.L.J. 1) also has no application. That was a case where the issue involved was that the Rule governing the employees was silent about

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the assistance to the employees in the domestic enquiry and there was no inhibition to the employee to be defended by legal practitioner. In such circumstances, the Supreme Court has held that the rejection of such representation for assistance by the delinquent is not proper.

16. Again, the judgment relied upon by the learned counsel appearing for the petitioner in S. Gnanasambandam vs. Tamil Nadu Cements Corporation Ltd., (2001 (3) L.L.N. 677) has no application to the facts of the case, since that was relating to a case where the Enquiry Officer appointed by the respondent Management was a Law Graduate and on such factual situation, a decision was arrived at to equate with such a qualified person the delinquent employee should be provided with equally effective assistance.

17. Again, the judgment of the Division Bench of this Court rendered in Chairman and Managing Director, Hindustan Teleprinters Ltd., vs. M.Rajan Isaac (2005 (2) L.L.N. 853) has no application since there also it was a case where the employer's representative was legally trained person.

18. In a recent judgment of the Supreme court in National Seeds Corporation vs. K.V. Rama Reddy (2007 (1) SCC (L&S) 512), in almost an identical situation, the option to be assisted by another employee was given as per the National Seeds Corporation (Conduct, Discipline and Appeal) Rules, 1992. The Supreme Court has held that refusal by the employer to permit engagement of a legal practitioner is not prejudicial to the interest of the delinquent employee. Rule 31(7) of the above said Rules, which was involved in the said case was almost synonymous to the present Rules, which are relied upon by the first respondent Management. While construing the said rule, the Supreme Court had to refer to a Rule in the Railway Establishment Code as that of the present Rule involved. The Supreme Court has held as follows:

> "6. The rival submissions have to be tested in the background of Rule 31(7) of the Rules. The same reads as follows:
>
> Rule 31(7) - The employee may take the assistance of any other employee working in the particular unit where the employee is working/was working at the time of happenings of alleged changes to which the inquiry relates or where the inquiry is being conducted to present the case on his behalf but may not engage a legal practitioner for the purpose unless the presenting officer appointed by the disciplinary authority is a legal practitioner or the disciplinary authority having regard to the circumstances of the case, so permits.
>
> 7. The law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that Page 4331 there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of

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disciplinary proceedings specifically recognize such a right and provide for such representation (See N. Kalindi v. Tata Locomotive & Engg. Co. Ltd. (AIR 1960 SC 914), Dunlop Rubber Co. (India) Ltd. v. Workmen (AIR SC 1392), Crescent Dyes and Chemicals Ltd. v. Ram Naresh Tripathi (1993 SCC (L&S) 360), and Indian Overseas Bank v. Indian Overseas Bank Officers' Association and Anr. (2002 SCC (L&S) 1043).

8. "27. The basic principle is that an employee has no right to representation in the departmental proceedings by another person or a lawyer unless the Service Rules specifically provide for the same. The right to representation is available only to the extent specifically provided for in the Rules. For example, Rule 1712 of the Railway establishment Code provides as under:

The accused railway servant may present his case with the assistance of any other railway servant employed on the same railway (including a railway servant on leave preparatory to retirement) on which he is working. 28. The right to representation, therefore, has been made available in a restricted way to a delinquent employee. He has a choice to be represented by another railway employee, but the choice is restricted to the Railway on which he himself is working, that is, if he is an employee of the Western Railway, his choice would be restricted to the employees working on the Western Railway. The choice cannot be allowed to travel to other Railways."

Therefore, the contention as if the petitioner was not permitted to have an effective defence on comparison with the representative of the employer has to be rejected as it was done by the Industrial Tribunal.

19. The reliance placed by the learned counsel appearing for the petitioner, on the judgment of the Supreme Court in C.L. Subramaniam vs. Collector of Customs, Cochin (1972 (1) L.L.J. 465), is also not applicable to the facts of this case. That was a case, where, while construing Rule 15 (5) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, the Apex Court has held in the following terms:

"The disciplinary authority may nominate any person to present the case in support of the charges before the authority inquiring into the charges (hereinafter referred to as the Inquiring Authority). The Government servant may present his case with the assistance of any Government servant approved by the disciplinary authority, but may not engage a legal practitioner for the purpose unless the person nominated by the disciplinary authority as aforesaid is a legal practitioner or unless the disciplinary

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authority, having regard to the circumstances of the case, so permits. "

When the Government has appointed one Mr. Shivaraman, a trained Police Prosecutor to present the case of the Establishment, the Supreme Court has held that the request of the delinquent officer to be assisted by the legal practitioner is not irrelevant.

20. About the next contention regarding non-furnishing of the report of Handwriting Expert, viz., Sri. D.R. Rohilla, Senior Scientific Officer, a reference to the entire record shows that the report of the Handwriting Expert has never been relied upon by the Tribunal or the Disciplinary Authority and such report has also not been produced before the Tribunal. In such circumstances, I do not think that there is any infirmity in the proceeding in non-furnishing of the said report. When the report has not been relied upon by the Management at all simply because he was one of the witnesses in the charge memo, who was neither examined nor the report relied upon, such fact will not give any right on the part of the delinquent to ask for copy of such report since that will be only an unnecessary formality. Likewise, the report of the Inspector of Police, who was examined as PW.10 in the domestic enquiry has not also been relied upon anywhere, and therefore the question of submitting the copies of such report to the petitioner has not affected the validity or otherwise of the disciplinary proceedings. On the other hand it is not in dispute that the said PW.10 was subjected to cross examine by the petitioner. A reference to the charge shows that is not a mere criminal conduct of misappropriation, or violation of Rules, but also patent error committed by the petitioner. On the face of it as I have enumerated above, viz., that a ticket was produced in respect of train which was not at all running on the said date and in spite of it the petitioner has chosen to make refund, which cannot be taken lightly by the establishment and in such cases when an entry is made by the petitioner as if he has refunded the amount of Rs.10,070/- there is no other go than inferring that it is for the benefit of the petitioner. As pointed out by the Supreme Court in A. Sudhakar vs. Postmaster-General, Hyderabad (2006 (2) L.L.N. 540) on the totality of the entire situation, as I have stated above by not supplying the said reports of the Handwriting Expert as well as the report of the C.B.I. Inspector, it has not resulted in denial of justice to the petitioner at all. It is due to the reason that the reports are not relied upon by the establishment and they were not relevant for the charges framed against the petitioner at all. The Supreme Court, in the above said case has laid down the procedural principal in respect of Article 311 (2) of the Constitution explaining about the procedural requirements to be followed in the Departmental Enquiry which are as follows:

(i) opportunity to the officer concerned to deny his guilt and establish his innocence which means he must be told that what the charges against him are and the allegations on which such charges are based;

(ii) he must be given a reasonable opportunity to cross-examine the witnesses produced against him and examine himself or other witnesses on his behalf; and

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(iii)he must be given opportunity to show cause that the proposed punishment would not be proper punishment to inflict which means that the tentative determination of the competent authority to inflict one of the three punishments must be communicated to him. "

On the facts and circumstances of the case all the said requirements have been complied with and therefore there is absolutely question of any infirmity in the domestic enquiry or in the disciplinary proceedings and therefore the findings of the Industrial Tribunal cannot be treated to be perverse and therefore, the writ petition fails and the same is dismissed. However, there will be no order as to costs.

Kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. General Manager
   Southern Railway
   Madras.

2. Presiding Officer
   Central Government Industrial
   Tribunal-cum-Labour Court
   Sasthiri Bhavan
   Nungambakkam, Chennai.

1 cc to M/s.Balan Haridas Advocate SR.NO.42690

TM (co)
RD 21.7.07

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